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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,849	10/19/2001	Markus Wilhelm Altmann	CM2464	6643

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EXAMINER

DELCOTTO, GREGORY R

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 03/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/037,849

Applicant(s)

ALTMANN ET AL

Examiner

Gregory R. Del Cotto

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 1-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 11-23 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-23 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. ____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1/29/2003.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

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DETAILED ACTION

1. Claims 1-23 are pending.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-10, drawn to a process of treating clothes, classified in class 8, subclass 115.51.
- II. Claims 11-23, drawn to a fabric treating composition comprising an amphoteric polymer and article of manufacture comprising an amphoteric polymer, classified in class 510, subclass 499.

The inventions are distinct, each from the other because of the following reasons:

Inventions of Group I and Group II are related as product and process of use.

The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the invention of Group I can be used in a materially different process such as in a method of cleaning dishes.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

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Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with David Upite on February 27, 2004, a provisional election was made with traverse to prosecute the invention of Group II, claims 11-23. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-10 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

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the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 11, 12, 15, 16, and 18-21 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Suzuki et al (US 4,534,892).

Suzuki et al teach a liquid detergent composition containing an anionic surface active agent and a water-insoluble fine powder, characterized by containing therein a cross linking type amphoteric polymer and an inorganic salt. Detergents according to the invention are widely applicable to various purposes such as for shampoo, liquid cleaner, etc. See Abstract. Cross linking type amphoteric polymers are those which are obtained by copolymerization of acidic and basic monomers, or polymerization of amphoteric monomers in the presence of cross linking monomers. A typical copolymerization product is obtained by copolymerizing a monomer mixture comprising 20-80 mole% of an acidic vinyl monomer or its salt, 20 to 80 mol% of a basic vinyl monomer or its salt and 0.01 to 5 mol% of a cross linking monomer. Suitable acidic vinyl monomers include acrylic acid, methacrylic acid, itaconic acid, etc. See column 2, lines 25-55. By basic vinyl monomer, it is meant compounds having in a molecule basic groups such as primary amino, secondary amino or tertiary amino groups

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including dimethylaminoethyl methacrylate, diethylaminoethyl methacrylate, 4-vinylpyridine, etc. Salts of these basic monomers, i.e, quaternary ammonium compounds, are intended to include hydrides, ethylation products which have a chlorine ion, etc., as a counter anion. See column 2, line 60 to column 3, line 10.

Note that, with respect to the instructions recited by instant claims 15-20, the Examiner asserts that these instruction merely recite an intended use of the article of manufacture and are not a patentable limitation. Regarding applicant's recitation of what is disclosed by the instructions, "Where sole distinction set out in claims over prior art is in printed matter, there being no new feature of physical structure and no new relation of printed matter to physical structure, such claims may not be allowed; it is only where claims define either new features of structure or new relations of printed matter to structure, or both, which new features or new relations give rise to some new and useful function, effect, or result, that claims may be allowed; particular branch or art considered does not change these principles." *Ex parte Gwinn*, 112 USPQ 439. As the compositions are obvious, and the instructions do not give rise to a new and useful function, effect or result, they do not contribute a patentable difference to applicant's invention.

Note that, the Examiner asserts that the compositions taught by Suzuki et al would inherently be formulated at the isoelectric point of the amphoteric polymer since Suzuki teaches compositions containing the same amphoteric polymer in the same proportions as recited by the instant claims. Accordingly, the broad teachings of Suzuki et al are sufficient to anticipate the material limitations of the instant claims.

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Alternatively, even if the broad teachings of Suzuki et al are not sufficient to anticipate the material limitations of the instant claims, it would have been nonetheless obvious to one of ordinary skill in the art to formulate the composition at the isoelectric point of the amphoteric polymer in order to provide the optimum cleaning properties to the composition since Suzuki et al teach that the monomers used to formulate the amphoteric polymer and other components of the composition may be varied.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki et al (US 4,534,892).

Suzuki et al are relied upon as set forth above. However, Suzuki et al do not specifically teach the use of a spray dispenser as recited by instant claim 17.

It would have been obvious to one of ordinary skill in the art to use the cleaning composition as taught by Suzuki et al in combination with a spraying dispenser, with a reasonable expectation of success, because spray dispensing devices are notoriously well-known in the art as containers for the numerous cleaning applications as taught by Suzuki et al.

Claims 11 and 15-20 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Silvester et al (US 5,695,677).

Silvester et al teach an aerosol ironing aid composition in the form of a stable emulsion including 0.1 to 2.5% of a non-polysaccharide, a non-cellulosic stiffening agent, 0.4 to 3% of an emulsified gliding agent, 5 to 25% of dimethyl ether as propellant, and the balance, water. See Abstract. Suitable stiffening agents include amphoteric polymers such as amphomer, etc. See column 2, lines 1-25.

Note that, with respect to the instructions recited by instant claims 15-20, the Examiner asserts that these instruction merely recite an intended use of the article of manufacture and are not a patentable limitation. Regarding applicant's recitation of what is disclosed by the instructions, "Where sole distinction set out in claims over prior art is in printed matter, there being no new feature of physical structure and no new relation of printed matter to physical structure, such claims may not be allowed; it is only where claims define either new features of structure of new relations of printed matter to structure, or both, which new features or new relations give rise to some new and useful function, effect, or result, that claims may be allowed; particular branch or art considered does not change these principles." *Ex parte Gwinn*, 112 USPQ 439. As the compositions are obvious, and the instructions do not give rise to a new and useful function, effect or result, they do not contribute a patentable difference to applicant's invention.

Specifically, Silvester et al teach an aerosol composition containing 0.5% Amphomer, 2.0% HV-490 Emulsion, 0.2% borax, 0.35% Amp Regular, 0.5% sodium benzoate, 0.08% Tektemer 38 AD, 0.1% phenoxyethanol, 0.1% perfume, water, and 8% dimethylether propellant. See column 4, lines 25-69.

Accordingly, the broad teachings of Silvester et al are sufficient to anticipate the material limitations of the instant claims.

Alternatively, even if the broad teachings of Silvester al are not sufficient to anticipate the material limitations of the instant claims, it would have been nonetheless obvious to one of ordinary skill in the art to formulate the composition at the isoelectric

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point of the amphoteric polymer in order to provide the optimum cleaning properties to the composition since Silvester et al teach that the monomers used to formulate the amphoteric polymer and other components of the composition may be varied.

Claims 11, 12, and 15, 16, and 18-21 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Tartakovsky et al (US 5,981,456).

Tartakovsky et al teach an automatic dishwashing detergent composition which contains an effective amount of a defined water soluble cationic or amphoteric polymer and a phosphate or nonphosphate builder. The polymers are soluble or dispersible to at least 0.01% by weight in distilled water at 25 degrees Celsius. See Abstract.

Amphoteric polymers are defined as polymers in which at least one of the comprising monomer units contains a cationic charge over a portion of the pH range 6-11 and at least one the comprising monomer units contains an anionic charge over the same portion of the pH range 6-11. See column 3, lines 5-25. Examples of the cationic monomers suitable include co-polyvinyl amine, etc. See column 5, lines 15-25. Suitable anionic monomers include acrylic acid, methacrylic acid, etc. See column 7, lines 25-55.

Note that, with respect to the instructions recited by instant claims 15-20, the Examiner asserts that these instructions merely recite an intended use of the article of manufacture and are not a patentable limitation. Regarding applicant's recitation of what is disclosed by the instructions, "Where sole distinction set out in claims over prior art is in printed matter, there being no new feature of physical structure and no new

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relation of printed matter to physical structure, such claims may not be allowed; it is only where claims define either new features of structure of new relations of printed matter to structure, or both, which new features or new relations give rise to some new and useful function, effect, or result, that claims may be allowed; particular branch or art considered does not change these principles." *Ex parte Gwinn*, 112 USPQ 439. As the compositions are obvious, and the instructions do not give rise to a new and useful function, effect or result, they do not contribute a patentable difference to applicant's invention.

Specifically, Tartakovsky et al teach machine dishwashing formulations containing various amphoteric polymers in addition to other detergent ingredients. See column 17, line 60 to column 18, line 69.

Note that, the Examiner asserts that the compositions taught by Tartakovsky et al would inherently be formulated at the isoelectric point of the amphoteric polymer since Suzuki teaches compositions containing the same amphoteric polymer in the same proportions as recited by the instant claims. Accordingly, the broad teachings of Tartakovsky et al are sufficient to anticipate the material limitations of the instant claims.

Alternatively, even if the broad teachings of Tartkovsky al are not sufficient to anticipate the material limitations of the instant claims, it would have been nonetheless obvious to one of ordinary skill in the art to formulate the composition at the isoelectric point of the amphoteric polymer in order to provide the optimum cleaning properties to the composition since Tartakovsky et al teach that the monomers used to formulate the amphoteric polymer and other components of the composition may be varied.

Claims 13, 14, 22, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tartakovsky et al (US 5,981,456).

Tartakovsky et al are relied upon as set forth above. However, Tartakovsky et al do not teach a composition containing the specific amphoteric polymers in addition to the other requisite components of the composition in the specific proportions as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a composition containing the specific amphoteric polymers in addition to the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teaching of Tartakovsky et al suggest a composition containing the specific amphoteric polymers in addition to the other requisite components of the composition in the specific proportions as recited by the instant claims.

Conclusion

2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Remaining references cited but not relied upon are considered to be cumulative to or less pertinent than those relied upon or discussed above.


Applicant is reminded that any evidence to be presented in accordance with 37 CFR 1.131 or 1.132 should be submitted before final rejection in order to be considered timely.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (571) 272-1312. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Gregory R. Del Cotto
Primary Examiner
Art Unit 1751

GRD
February 28, 2004